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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
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12 SUSAN F. WYATT,
13 Plaintiff,

14 v.

15 CAROLYN W. COLVIN,
16 Acting Commissioner of the
17 Social Security Administration,
18 Defendant.
19

No. EDCV 15-1961 SS

MEMORANDUM DECISION AND ORDER

20 I.

21 INTRODUCTION
22

23 Susan F. Wyatt ("Plaintiff") seeks review of the final
24 decision of the Commissioner of the Social Security Administration
25 (the "Commissioner" or the "Agency") denying request for her social
26 security benefits. The parties consented, pursuant to 28 U.S.C.
27 § 636(c), to the jurisdiction of the undersigned United States
28 Magistrate Judge. For the reasons stated below, the decision of

1 the Commissioner is REVERSED and REMANDED for further
2 administrative proceedings consistent with this decision.

3
4 **II.**

5 **PROCEDURAL HISTORY**

6
7 Plaintiff filed an application for Title XVI Supplemental
8 Security Income ("SSI") on January 25, 2012.¹ (Administrative
9 Record ("AR") 226-32). Plaintiff alleged a disability onset date
10 of September 1, 2010. (AR 228). The Agency denied Plaintiff's
11 application on July 6, 2012. (AR 93-96). Plaintiff filed a request
12 for reconsideration on July 24, 2012. (AR 98-100). The Agency
13 affirmed the denial of Plaintiff's claim on September 18, 2012.
14 (AR 101-03). On November 15, 2012, Plaintiff timely requested a
15 hearing before an Administrative Law Judge ("ALJ"). (AR 104-06).
16

17 A hearing before an ALJ was scheduled for June 28, 2013 at
18 the Agency's office in Boise, Idaho. (AR 135-36). However, upon
19 Plaintiff's request, the Agency transferred jurisdiction of the
20 claim to the Agency's office in Moreno Valley, California on June
21 28, 2013. (AR 141-46). A hearing was then scheduled at the
22 Agency's Moreno Valley, California office for January 27, 2014.
23 (AR 155-59). However, on January 8, 2014, Plaintiff's counsel
24 withdrew from representation following the transfer of
25 jurisdiction. (AR 179). On January 13, 2014, Plaintiff requested
26 a continuance from the Agency to retain new counsel. (AR 181).
27

28 ¹ Plaintiff filed a joint SSI application with her husband, Armand Beckwith Collins. (AR 226-32).

1 Plaintiff retained Mario A. Davila as her representative on January
2 17, 2014. (AR 207). Plaintiff retained Valerie Garcia as her
3 representative on February 17, 2014. (AR 225).

4
5 Plaintiff testified at a hearing before ALJ Marti Kirby on
6 February 19, 2014 ("Hearing"). (AR 44-65). Vocational Expert
7 ("VE") Luis Mas also testified. (AR 61-64).

8
9 The ALJ issued an unfavorable decision on March 6, 2014.
10 (AR 21-43). Plaintiff filed a timely request for review with the
11 Appeals Council ("Council") on April 2, 2014, (AR 19), which the
12 Council denied on July 25, 2015. (AR 1-5). The ALJ's decision thus
13 became the final decision of the Commissioner. Plaintiff filed the
14 instant action on September 23, 2015. (Dkt. No. 1).

15 16 III.

17 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

18
19 To qualify for disability benefits, a claimant must
20 demonstrate a medically determinable physical or mental impairment
21 that prevents her from engaging in substantial gainful activity
22 and that is expected to result in death or to last for a continuous
23 period of at least twelve months. Reddick v. Chater, 157 F.3d 715,
24 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The
25 impairment must render the claimant incapable of performing the
26 work she previously performed and incapable of performing any other
27 substantial gainful employment that exists in the national economy.
28

1 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing
2 42 U.S.C. § 423(d)(2)(A)).

3
4 To decide if a claimant is entitled to benefits, an ALJ
5 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The
6 steps are:

7
8 (1) Is the claimant presently engaged in substantial
9 gainful activity? If so, the claimant is found not
10 disabled. If not, proceed to step two.

11 (2) Is the claimant's impairment severe? If not, the
12 claimant is found not disabled. If so, proceed to
13 step three.

14 (3) Does the claimant's impairment meet or equal one of
15 the specific impairments described in 20 C.F.R.
16 Part 404, Subpart P, Appendix 1? If so, the
17 claimant is found disabled. If not, proceed to
18 step four.

19 (4) Is the claimant capable of performing his past
20 work? If so, the claimant is found not disabled.
21 If not, proceed to step five.

22 (5) Is the claimant able to do any other work? If not,
23 the claimant is found disabled. If so, the claimant
24 is found not disabled.

25
26 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
27 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R.
28 §§ 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

1 The claimant has the burden of proof at steps one through
2 four, and the Commissioner has the burden of proof at step five.
3 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an
4 affirmative duty to assist the claimant in developing the record
5 at every step of the inquiry. Id. at 954. If, at step four, the
6 claimant meets her burden of establishing an inability to perform
7 past work, the Commissioner must show that the claimant can perform
8 some other work that exists in "significant numbers" in the
9 national economy, taking into account the claimant's residual
10 functional capacity ("RFC"), age, education, and work experience.
11 Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20
12 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do
13 so by the testimony of a vocational expert or by reference to the
14 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404,
15 Subpart P, Appendix 2 (commonly known as "the Grids"). Osenbrock
16 v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant
17 has both exertional (strength-related) and non-exertional
18 limitations, the Grids are inapplicable and the ALJ must take the
19 testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864,
20 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340
21 (9th Cir. 1988)).

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IV.

THE ALJ'S DECISION

The ALJ employed the five-step sequential evaluation process. At step one, the ALJ found that Plaintiff had not engaged in substantial gainful employment since January 25, 2012.² (AR 26). At step two, the ALJ found that Plaintiff had four "severe" impairments: depression, anxiety, personality disorder, and PTSD. (AR 26). At step three, the ALJ found that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR 28).

At step four, the ALJ determined that Plaintiff retained a Residual Functional Capacity ("RFC") to "perform a full range of work at all exertional levels" subject to the following non-exertional limitations:

[Plaintiff] cannot climb ladders, ropes, or scaffolds; she cannot work at unprotected height, around moving machinery, or other hazards; she cannot do a job requiring hypervigilance or intense concentration on a particular task, meaning she cannot do a job in which she could not be off tasks for the briefest amount of time, like watching a surveillance monitor or where

² Plaintiff alleged a disability onset date of September 1, 2010. (AR 31). However, in his decision, the ALJ did not provide a detailed discussion of the Plaintiff's medical history prior to January 25, 2012, the date the initial SSI application was filed, because it was of "limited relevance." (AR 31).

1 safety might be an issue; she is limited to unskilled
2 nonpublic work; she can have occasional non-intense
3 interactions with coworkers or supervisors; and she
4 cannot do fast paced production of assembly line type of
5 work.

6
7 (AR 29) .

8
9 In making this finding, the ALJ considered Plaintiff's
10 subjective allegations, but found them not credible and
11 "inconsistent with the objective medical evidence." (AR 30). The
12 ALJ also rejected the statements of Plaintiff's husband. (AR 31).
13 The ALJ gave "great weight" to the opinions of the State agency
14 psychological consultants in his decision and rejected the opinion
15 of Plaintiff's treating physician, Dr. Denise Dittemore, as
16 "inconsistent with the objective medical evidence as a whole."
17 (AR 35-36) .

18
19 Finally, at step five the ALJ considered Plaintiff's age,
20 education, work experience and RFC, and concluded that she could
21 perform jobs available in significant numbers in the national
22 economy. (AR 37). The ALJ noted that, due to Plaintiff's
23 "nonexertional limitations," she could not be expected to perform
24 work at "all exertional levels." (AR 37). However, considering
25 the VE's testimony, the ALJ found that Plaintiff could find
26 employment in small parts assembly, as a swatch clerk, or as a
27 photocopy machine worker. (AR 37). Therefore, the ALJ concluded
28 that Plaintiff was not disabled under the Agency's rules. (AR 38).

V.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The court may set aside the Commissioner's decision when the ALJ's findings are based on legal error or are not supported by "substantial evidence" in the record as a whole. Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

"Substantial evidence is more than a scintilla, but less than a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v. Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant evidence which a reasonable person might accept as adequate to support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066; Smolen, 80 F.3d at 1279). To determine whether substantial evidence supports a finding, the court must "'consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming or reversing that conclusion, the court may not substitute its judgment for that of the Commissioner. Reddick, 157 F.3d at 720-21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

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1 VI.

2 DISCUSSION

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4 Plaintiff argues that the ALJ failed to provide reasons
5 supported by substantial evidence for rejecting the opinion of her
6 treating physician, Dr. Dittmore. (Plaintiff's Memorandum in
7 Support of Complaint (the "MSC"), Dkt. No. 17, at 5). Plaintiff
8 further argues that the Appeals Council erred in refusing to
9 consider new medical evidence material to the determination of
10 disability. (MSC at 12). The Court agrees with both contentions.
11

12 The record demonstrates that the ALJ failed to provide
13 legitimate reasons for rejecting the opinion of Plaintiff's
14 treating physician. In addition, the Appeals Council improperly
15 excluded new medical information, which may be material to the
16 disability determination. Accordingly, for the reasons discussed
17 below, the Court finds that the ALJ's decision must be REVERSED
18 and REMANDED.
19

20 **A. The ALJ Failed to Properly Consider The Opinion Of Plaintiff's**
21 **Treating Physician**
22

23 Plaintiff asserts that the ALJ erred in rejecting the treating
24 physician's opinion by improperly relying on isolated evidence of
25 conservative medical treatment and intermittent improvements in
26 Plaintiff's condition. (MSC at 7-9). The Court agrees.

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1 In a disability determination before the Agency, the opinions
2 of treating physicians are entitled to special weight because the
3 treating physician is hired to cure, and therefore has a better
4 opportunity to know and observe the claimant as an individual.
5 Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003); Thomas v.
6 Barnhart, 278 F.3d 947, 956-57 (9th Cir. 2002); Magallanes v.
7 Bowen, 881 F.2d 747, 751 (9th Cir. 1989). Where the Agency finds
8 the treating physician's opinion well-supported by accepted medical
9 techniques and consistent with the other substantive evidence in
10 the record, that opinion is ordinarily controlling.
11 20 C.F.R. § 404.1527(c)(2); Orn v. Astrue, 495 F.3d 625, 631 (9th
12 Cir. 2007). When contradicted by another doctor, the treating
13 physician's opinion is owed deference and given the "greatest
14 weight." Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014).
15 The ALJ may not reject the contradicted opinion without providing
16 "specific and legitimate" reasons, supported by substantial
17 evidence in the record. See Ryan v. Comm'r of Soc. Sec., 528
18 F.3d 1194, 1198 (9th Cir. 2008); Orn, 495 F.3d at 632.

19
20 Dr. Dittmore treated Plaintiff from August 2013 through June
21 2014. (See AR 461-62, 465-66, 467-68). At Plaintiff's initial
22 evaluation on August 15, 2013, Dr. Dittmore noted that Plaintiff
23 was depressed, irritable and anxious. (AR 462). She diagnosed
24 Plaintiff with bipolar disorder, generalized anxiety disorder and
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1 post-traumatic stress disorder, and assigned a GAF score of 50.³
2 (AR 461-62).

3
4 Plaintiff saw Dr. Dittmore again on January 3, 2014.
5 (AR 467-69). Dr. Dittmore noted that Plaintiff suffered from
6 "depression and low energy," and had "difficulty keeping up
7 hygiene." (AR 468). She opined that Plaintiff's mental
8 impairments had a moderate impact on her "ability to make judgments
9 on simple work-related decisions." (AR 468). She also stated that
10 Plaintiff had "extreme" limitations in her ability to "respond
11 appropriately to usual work situations and to changes in a routine
12 work setting." (AR 468).

13
14 The ALJ gave "little weight" to Dr. Dittmore's opinion that
15 Plaintiff "did not have the mental capacity to engage in sustained
16 work activity" because the opinion was "inconsistent with the
17 objective medical evidence as a whole." (AR 36). Specifically,
18 the ALJ rejected Dr. Dittmore's opinion because:

19
20 The medication regimen was effective in controlling the
21 [Plaintiff's] symptoms even when she complained of
22 increased symptoms related to psychological stressors,
23 lack of medication use, or drug use. This opinion is

24
25 ³ A Global Assessment of Functioning (GAF) score is the clinician's
26 judgment of an individual's overall level of functioning. American
27 Psychiatric Association, Diagnostic and Statistical Manual of
28 Mental Disorders at 32 (4th Ed. 2000). A GAF score of 41-50
indicates "[s]erious symptoms (e.g., suicidal ideation, severe
obsessional rituals, frequent shoplifting) OR any serious
impairment in social, occupational, or school functioning (e.g.,
no friends, unable to keep a job)." Id. at 34.

1 also inconsistent with Dr. Dittmore's own treatment
2 records that document continued conservative treatment
3 despite complaints of increased psychological symptoms
4 and no referral for overnight inpatient psychiatric
5 treatment.

6
7 (AR 36) (internal citations omitted).
8

9 As discussed more fully below, the Court finds that the ALJ's
10 reasons for rejecting Dr. Dittmore's opinions were not "specific
11 and legitimate reasons." Therefore, remand is required.
12

13 **1. The ALJ Erred In Rejecting Dr. Dittmore's Opinion On**
14 **The Grounds That Plaintiff's "Medication Regimen Was**
15 **Effective"**
16

17 The ALJ rejected Dr. Dittmore's opinion because Plaintiff's
18 "medication regimen was effective in controlling [Plaintiff's]
19 symptoms." (AR 36). The ALJ cited treatment notes from the staff
20 of the Lifeways mental clinic ("Lifeways") from April 2011 - March
21 2013, (AR 333-71), indicating that Plaintiff's medication regimen
22 was effective "even when [Plaintiff] complained of increased
23 symptoms related to psychological stressors, lack of medicine use,
24 or drug use." (AR 36).⁴ In addition, the ALJ noted that Plaintiff's
25

26 ⁴ Plaintiff received treatment at the Lifeways mental health clinic
27 while she was living in Oregon. (AR 34, 494). In 2013, Plaintiff
28 moved to California, and began seeing Dr. Dittmore for treatment.
(AR 34, 461). Although the ALJ's written decision includes a
detailed summary of Plaintiff's treatment at Lifeways, the ALJ did
not directly address the medical opinions of the Lifeways staff in

1 recent marriage and ability "to be cooperative and cordial during
2 the hearing" undermined her claims of "extreme social limitations."
3 (AR 36).

4
5 While the cited treatment note passages appear to show an
6 improvement in Plaintiff's condition, the ALJ failed to mention
7 that the records also show frequent fluctuations over the same
8 period. For example, the ALJ cited a January 23, 2013 Lifeways
9 report in which clinical staff noted that Plaintiff stated, "I feel
10 so much better." (AR 445). However, the same medical report noted
11 that the Plaintiff "is still having panic attacks, a couple times
12 a week." (AR 445). Moreover, the ALJ ignored a follow-up medical
13 report from February 19, 2013, in which Lifeways staff said
14 Plaintiff "went from severe agitation, to crying, to having panic
15 symptoms, all within minutes of one another." (AR 443).

16
17 Thus, the ALJ's reliance on a finding that the "medication
18 regimen was effective in controlling [Plaintiff's] symptoms"
19 reflects an overly selective reading of the record. This selective
20 reading fails to constitute substantial evidence to discredit Dr.
21 Dittemore's opinion. See Reddick, 157 F.3d at 723 (it is
22 impermissible for the ALJ to develop an evidentiary basis by "not
23 fully accounting for the context of materials or all parts of the
24 testimony and reports"); Gallant v. Heckler, 753 F.2d 1450, 1456
25 (9th Cir. 1984) (an ALJ may not reach a conclusion and justify it

26
27 his determination. (AR 36). Despite voluminous medical records
28 from Lifeways clinical staff, the ALJ selected isolated evidence
from the Lifeways treatment notes only to contradict Dr.
Dittemore's findings. (AR 36).

1 by ignoring competent evidence in the record that would suggest
2 the opposite result).

3
4 Moreover, even if the record consistently showed that
5 medication improved Plaintiff's condition, this fact alone would
6 not demonstrate that the Plaintiff was not disabled under Agency
7 rules. See Holohan v. Massanari, 246 F.3d 1195, 1205
8 (9th Cir. 2001) ("That a person who suffers from severe panic
9 attacks, anxiety and depression makes some improvement does not
10 mean that the person's impairments no longer seriously affect her
11 ability to function in a workplace."); Kellough v. Heckler, 785
12 F.2d 1147, 1153 (4th Cir. 1986) ("'Feels well' and 'normal
13 activity' must be read in context . . ."). Even while the ALJ
14 nominally rejected Dr. Dittemore's opinion as "inconsistent with
15 the objective medical evidence," the ALJ still "accommodated the
16 limitations noted by Dr. Dittemore by precluding [Plaintiff] from
17 jobs that require hypervigilance or intense concentration on a
18 particular task, limiting her to unskilled nonpublic work with
19 occasional non-intense interactions with coworkers or supervisors,
20 and precluding her from fast paced production or assembly line type
21 of work." (AR 36). Thus, the ALJ's own decision recognized the
22 severity of Plaintiff's limitations.

23
24 Because the medical evidence demonstrates that Plaintiff
25 continued to suffer from a serious mental impairment, the ALJ's
26 finding that the medication regimen was "effective" in controlling
27 her symptoms is not a legitimate reason to reject Dr. Dittemore's
28 opinion.

1 **2. The ALJ Erred In Rejecting Dr. Dittemore's Opinion On**
2 **The Grounds That Plaintiff's Treatment Was**
3 **"Conservative"**
4

5 The ALJ found that Dr. Dittemore's opinion was inconsistent
6 with Plaintiff's medical records because she received "conservative
7 treatment despite complaints of increased psychological symptoms."
8 (AR 36). In rejecting Dr. Dittemore's opinion, the ALJ only
9 considered Dr. Dittemore's treatment records and not past records
10 prepared by Lifeways staff. (AR 36). The full record shows that
11 Plaintiff regularly sought mental health treatment since at least
12 April 2011. (AR 370-71). Doctors prescribed Plaintiff a variety
13 of medications to treat her mental illness, including Clonazepam,
14 Seroquel, Sertraline, Trazadone and Wellbutrin. (See AR 333-70).
15 Moreover, medication type and dosage were routinely adjusted in
16 response to changes in Plaintiff's condition. (AR 333, 342, 353,
17 355-56, 358, 365-69).
18

19 The ALJ's characterization of Plaintiff's treatment as
20 "conservative" is questionable. An ALJ may use evidence of
21 "conservative care" to discount testimony regarding the severity
22 of an impairment. See Parra v. Astrue, 481 F.3d 742, 750-51 (9th
23 Cir. 2007). However, a mental health medication regimen, involving
24 numerous variations of medications and treatment and spanning
25 multiple years is not fairly characterized as "conservative care."
26 See Gentry v. Colvin, 2013 WL 6185170 at *18 (E.D. Cal. 2013)
27 (holding that a multi-prescription medication regimen to treat
28 anxiety disorder, major depressive disorder and PTSD did not

1 constitute "conservative care"). Accordingly, the ALJ's finding
2 that Plaintiff received "conservative treatment" is not a
3 legitimate reason to reject Dr. Ditte more's opinion.

4
5 **B. The Appeals Council Improperly Excluded New Evidence Material**
6 **To The Determination Of Disability**

7
8 Plaintiff asserts that the Appeals Council improperly excluded
9 new medical evidence relating to Plaintiff's condition prior to
10 the ALJ's decision. (MSC at 13). The Court agrees.

11
12 When making a disability determination, "[i]f new and material
13 evidence is submitted, the Appeals Council shall consider the
14 evidence only where it relates to the period on or before the date
15 of the administrative law judge hearing decision." 20 C.F.R.
16 § 404.970(b). Medical evaluations done after the relevant time
17 period are still relevant, if they relate back to the Plaintiff's
18 condition during the time period at issue. See Taylor v. Comm'r of
19 Soc. Sec. Admin., 659 F.3d 1228, 1232 (9th Cir. 2011) (quoting
20 Lester v. Chater, 81 F.3d 821, 832 (9th Cir. 1996)). In Taylor,
21 the court found that an Appeals Council was required to consider
22 the results of a psychiatric evaluation conducted after the
23 relevant time period because it concerned the status of a
24 plaintiff's "mental impairments and limitations" before the period
25 expired. Id. at 1232-33. Where the Appeals Council is required
26 to consider new evidence but fails to do so, the district court
27 must still consider a post-hearing physician's opinion as part of
28 the court's "overall review of the ALJ's decision." Warner v.

1 Astrue, 859 F.Supp.2d 1107, 1115 (2012). The district court may
2 remand the case to the ALJ to reconsider the decision in light of
3 the additional evidence. Taylor, 81 F.3d at 1233.

4
5 This Court may remand a matter to the Agency if the new
6 evidence is "material" to a determination of disability, and
7 Plaintiff shows "good cause" for having failed to produce that
8 evidence earlier. 42 U.S.C. § 405(g). To be material, the new
9 evidence must bear directly and substantially on the matter at
10 issue and there must be a "reasonable possibility" that the new
11 evidence would have changed the outcome of the administrative
12 hearing. Mayes v. Massanari, 276 F.3d 453, 462 (9th Cir. 2001)
13 (as amended); Booz v. Secretary of Health & Human Servs., 734
14 F.2d 1378, 1380-81 (9th Cir. 1984). The good cause requirement is
15 satisfied if new information surfaces after the Commissioner's
16 final decision and the claimant could not have obtained that
17 evidence at the time of the administrative proceeding. Key v.
18 Heckler, 754 F.2d 1545, 1551 (9th Cir. 1985). A claimant does not
19 meet the good cause requirement by merely obtaining a more
20 favorable report once his claim has been denied. To demonstrate
21 good cause, the claimant must show that the new evidence was
22 unavailable earlier. Mayes, 276 F.3d at 463.

23
24 Here, Plaintiff submitted a Mental Impairment Questionnaire,
25 completed by Dr. Dittemore, to the Appeals Counsel along with her
26 request for review. (AR 307). Dr. Dittemore completed the
27 questionnaire on March 11, 2014, five days after the ALJ's
28 decision. (AR 307). In the questionnaire, Dr. Dittemore diagnosed

1 Plaintiff with bipolar I disorder, generalized anxiety and PTSD.
2 (AR 307). She also opined that Plaintiff was "markedly limited in
3 understanding and memory; concentration and persistence; social
4 interactions, and adaptation; and would likely experience episodes
5 of decompensation or deterioration in a work or work-like setting."
6 (AR 307).

7
8 In denying Plaintiff's Request for Review, the Appeals Council
9 acknowledged that it received new medical records dated March 11,
10 2014 and June 16, 2014. (AR 2). Plaintiff contends that the new
11 evidence "could essentially have supported [Dr. Dittemore's]
12 January 2014 opinion" regarding Plaintiff's mental health during
13 the period under consideration by the ALJ. (MSC at 12). However,
14 the Appeals Council summarily refused to consider the evidence
15 because "the new information [was] about a later time." (AR 2).
16 While the Appeals Council could have properly rejected new medical
17 evidence relating to the five-day period between the ALJ's decision
18 and the questionnaire's completion, it should have considered any
19 information pertaining to the period prior to the ALJ's decision.
20 The March 11, 2014 questionnaire included diagnoses for bipolar I
21 disorder, generalized anxiety and PTSD. (AR 307). That diagnosis,
22 made within five days of the ALJ's decision, was not "about a later
23 time," but was consistent with Dr. Dittemore's diagnosis of the
24 Plaintiff dating back to their first meeting on August 15, 2013.
25 (AR 461, 480). The new evidence appeared to include the time
26 period of Dr. Dittemore's treatment of Plaintiff, which includes
27 the time period under consideration by the ALJ. Accordingly, the
28 Appeals Council erred in excluding Dr. Dittemore's questionnaire

1 from its consideration because the new evidence related to the
2 period before the date of the ALJ's decision.

3
4 Remand for further proceedings is appropriate where additional
5 proceedings could remedy defects in the Commissioner's decision.
6 See Harman v. Apfel, 211 F.3d 1172, 1179 (9th Cir. 2000); Kail v.
7 Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984). Because the Appeals
8 Council improperly excluded new medical information for
9 consideration by the ALJ, the case must be remanded to remedy this
10 defect.

11
12 **VII.**

13 **CONCLUSION**

14
15 Accordingly, IT IS ORDERED that Judgment be entered REVERSING
16 the decision of the Commissioner and REMANDING this matter for
17 further proceedings consistent with this decision. IT IS FURTHER
18 ORDERED that the Clerk of the Court serve copies of this Order and
19 the Judgment on counsel for both parties.

20
21 DATED: October 19, 2016

/S/

22 SUZANNE H. SEGAL

23 UNITED STATES MAGISTRATE JUDGE

24
25 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN LEXIS/NEXIS,**
26 **WESTLAW OR ANY OTHER LEGAL DATABASE.**